

TEXAS BUSINESSES: TAKE CHILD ABUSE REPORTING SERIOUSLY

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Most educators in Texas know about their obligations under Texas law to report child abuse. But most Texas businesses assume that these reporting requirements do not apply to them. The truth is, the Texas statute is very broad and creates serious legal obligations for any person who regularly comes into contact with children and is or becomes aware of abuse.

For educators, the most important lesson learned from the tragic circumstances in the Pennsylvania State University sexual abuse scandal involving former football coach Jerry Sandusky is that it is always better to err on the side of caution when deciding whether to report suspected child abuse or neglect to the authorities. When in doubt, report it.

And yet, deciding what to do when faced with a possible abuse situation is not always as easy as it looks. Most people want to do the right thing, but often they become paralyzed when trying to decide what the "right thing" is. Considering the potential harm caused by not reporting, and the fairly strict reporting requirements under Texas law, the prudent course is always to report potential abuse circumstances whenever there is cause to believe that abuse has occurred.

The issue became front-page news in Texas a few months ago, when Harris County District Attorney Devon Anderson decided to bring charges against a principal and other administrators for failing to report to law enforcement

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officials information about a sexual abuse complaint against one of the school's teachers.

A Spanish teacher at Houston's Sharpstown High School was arrested in November 2013 on charges of inappropriate behavior with several students. What makes the story unique is that, in addition to charging the teacher accused of the misconduct, Anderson charged three high school administrators with failing to report the allegations. Anderson told reporters, "You don't only have a moral duty, you have a legal duty under the laws in the state of Texas that you must report any suspected child abuse."

Anderson was referring to a Texas law setting forth the duty to report child abuse and neglect, and its requirements are pretty clear. Chapter 261 of the Texas Family Code establishes the legal obligation to report abuse. Understanding what needs to be reported and when requires unpacking this statute.

Section 261.101 requires that any person — not just teachers, administrators, child care workers or health care workers — who has "cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect" shall immediately report the circumstances to law enforcement authorities, the Texas Department of Family and Protective Services, the state agency responsible for overseeing the facility where the abuse happened, or an agency designated by a court to be responsible for the protection of children.

As broadly as this statute is written, it could apply to a manager at a pizza restaurant catering to children, an employee at an amusement park, a scout leader or anyone who reasonably believes that a child has been harmed by abuse.

A person with knowledge of abuse cannot excuse a failure to report on the basis of privilege. Therefore, an attorney, clergy member, mental health professional or other person who might consider relying on a privilege is still obligated to disclose an abuse situation, notwithstanding the privilege. The identity of the person reporting the suspected abuse can remain confidential and may be disclosed only under very limited circumstances.

The statute also sets forth the reporting obligation

applicable to “professionals,” including teachers, nurses, doctors, social workers, mental health professionals, etc. They are required to report suspected abuse within 48 hours from the time the professional first suspects the abuse. A professional may not delegate the responsibility to report to another person or rely on another to make the report for him. Therefore, a school administrator’s obligation is to report incidents to law enforcement officials, not to others in the school hierarchy, although there is nothing preventing such a communication in addition to the reporting required by the statute.

Persons making reports under the statute are immune from civil or criminal liability if they make the reports in good faith. This means that the subject of the report generally may not sue for defamation on the basis of a report made under the section. On the other hand, a person who knowingly makes a false report of abuse or neglect can be held criminally responsible, and a second offense can amount to a state jail felony. Moreover, if a judge in a child-custody proceeding determines that a report was deliberately false or even lacking factual foundation, the court may modify a custody order limiting access to the child by the person who made the false report.

Employment protections exist for those making reports under the statute. If any professional in good faith reports child abuse or neglect to law enforcement, or even just to his supervisor, the employer may not retaliate in any way against the reporter. If the professional successfully proves retaliation, he can recover damages, reasonable attorney fees and injunctive relief. The statute contains the same damages caps — based on the size of the employer — found in Chapter 21 of the Texas Labor Code.

A person who has reason to believe that a child’s physical or mental health or welfare has been or may be adversely affected by abuse or neglect and still knowingly fails to make the required reporting is guilty of a Class A misdemeanor. If the abuse victim is a developmentally-disabled person living in a state-supported living center, the failure to report can be a felony.

Spotting an abuse situation, however, can be tricky. In the absence of a complaint of abuse by a child, or an admission by an adult that he has engaged in abusive behavior, concluding that abuse has occurred based solely on

circumstantial evidence is generally not required unless that evidence is especially damning. But if a child makes a report of abuse, in virtually every circumstance, a report should be made. This is true even when it appears that there may be inconsistencies or other factors which create questions regarding credibility. Simply stated, the reporting stage is not the point at which conclusions should be drawn about credibility in these circumstances, and in all cases those determinations are best left to the trained law enforcement officials.

Forty-seven other states require some form of child abuse reporting, but many statutes make reporting mandatory only for professionals, such as teachers or counselors. Those states make reporting for nonprofessionals optional. Educators — particularly those in Texas — would be wise not to take a chance and report what they have heard regarding abuse allegations to the authorities and let them sort it out.

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